



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

AUG 18 2006

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS
COMMAND (ATTN: ACQUISITION EXECUTIVE)
ASSISTANT SECRETARY OF THE ARMY
(ACQUISITION, LOGISTICS AND TECHNOLOGY)
ASSISTANT SECRETARY OF THE NAVY
(RESEARCH, DEVELOPMENT AND ACQUISITION)
ASSISTANT SECRETARY OF THE AIR FORCE
(ACQUISITION)
DIRECTORS OF THE DEFENSE AGENCIES

SUBJECT: Berry Amendment Pre-Award Compliance for Specialty Metals

On June 1, 2006, the Under Secretary of Defense (Acquisition, Technology and Logistics) signed a memorandum which addressed contractor post-award disclosures of non-compliance with the specialty metals restriction of the Berry Amendment (10 U.S.C. 2533a). Compliance with the Berry Amendment should be specifically addressed between the contracting officer and the contractor prior to contract award to avoid non-compliance during performance. When the contracting officer is aware of prior non-compliances by a contractor, or otherwise is concerned that compliance may be an issue, the contracting officer should specifically inquire and obtain verification from the contractor that compliant hardware will be delivered.

During market research, the contractor or contracting officer may learn that the cost of a compliant part will exceed the cost of a non-compliant one. The Berry Amendment provides an exception based on a higher cost for compliant parts, only if the cost of the compliant part exceeds the U.S. market price. This does not occur often. Thus, in general, the Berry Amendment requires payment of a higher cost for compliant parts.

A Domestic Non-Availability Determination (DNAD) may be approved in accordance with DFARS 225.7002-2(b). A DNAD should not be issued if an alternative compliant part will be available in sufficient time to meet the Department's needs. A DNAD may be of limited or indefinite duration, depending on whether a domestic source is expected to be available in the future, and whether the Department plans to take action to create a domestic source. If it is expected that a domestic source will become available in the future, the duration of the DNAD should be limited to the period of unavailability.

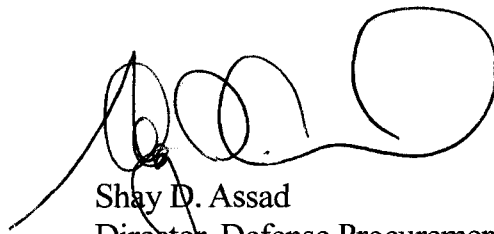


DoD components should devote resources to create domestic sources only when the industrial capabilities that are impacted are essential to national defense. To determine whether the industrial capabilities impacted are essential to the national defense, consult DoD Handbook 5000.60-H, "Assessing Defense Industrial Capabilities." The Office of the Deputy Under Secretary of Defense (Industrial Policy) can assist with this analysis (contact Mr. Chris Gregor at 703-607-4048).

If resources will be dedicated to establishing a domestic source, the DNAD should be limited to the time required to achieve sufficient domestic capacity. If not, the DNAD may be indefinite in duration, but market research should be continued to determine if other sources can be identified that will satisfy the Berry Amendment. If a domestic source is identified or a substitute part is found, the approving authority should be notified and the DNAD should be terminated.

If a military department secretary, or the USD(AT&L), approves a DNAD, other DoD components may rely upon the DNAD for the same part if it is determined that circumstances are similar (e.g., comparable quantity, time period).

Should you have additional questions, please contact Ms. Nancy Dowling at (703)697-9352 or at nancy.dowling@osd.mil. The DCMA point of contact is Mr. Dave Ricci at (703) 428-1144 or dave.ricci@dcma.mil.



Shay D. Assad
Director, Defense Procurement
and Acquisition Policy